



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,358	07/25/2003	Peter Migaly	290194-00001	2456
7590		04/08/2011		
DR. PETER MIGALY			EXAMINER	
P.O. BOX 237			OLSON, ERIC	
BLAIRSVILLE, PA 15717			ART UNIT	PAPER NUMBER
			1623	
			MAIL DATE	DELIVERY MODE
			04/08/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Notice of Allowability</b>	<b>Application No.</b> 10/627,358	<b>Applicant(s)</b> MIGALY, PETER
	<b>Examiner</b> ERIC S. OLSON	Art Unit 1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to Applicant's amendment submitted December 8, 2010.
2.  The allowed claim(s) is/are 1,2,4-8,10-38,41,42,48,51-53,55-60,63,64,66-68,70-124,126-132 and 135-151.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some\* c)  None of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftperson's Patent Drawing Review ( PTO-948) attached 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

/ERIC S OLSON/  
Primary Examiner, Art Unit 1623

**Examiner's Amendment**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Peter Migaly on February 17, 2011.

**The claims are amended as follows:**

Claim 3 is cancelled.

4. (Currently Amended): The method of Claims 1[,] or 2,~~or 3~~, wherein said antipsychotic drug is an atypical antipsychotic.

7. (Currently Amended): The method of Claims 1[,] or 2,~~or 3~~, wherein said antipsychotic drug is a dopamine system stabilizer.

10. (Currently Amended): The method of Claims 1[,] or 2,~~or 3~~, wherein said antidepressant is selected from the group consisting of fluoxetine, norfluoxetine, paroxetine, sertraline, fluvoxamine, citalopram, escitalopram, bupropion, nefazodone, mirtazapine, venlafaxine, duloxetine, milnacipran, reboxetine, zimelidine, indalpine, gepirone, femoxetine, alaproctate and pharmaceutically acceptable salts thereof, and

wherein said atypical antipsychotic drug is selected from the group consisting of risperidone, quetiapene, olanzapine, ziprasidone and aripiprazole.

11. (Currently Amended) :The method of Claims 1[,] or 2, or 3, wherein said antidepressant is selected from the group consisting of serotonin reuptake inhibitors, a selective norepinephrine reuptake inhibitors, combined action SSRI/SNRI, serotonin-2 antagonist/reuptake inhibitors, an antidepressant with alpha-2 antagonism plus serotonin-2 and serotonin-3 antagonism, an antidepressant with serotonin/norepinephrine/dopamine reuptake inhibition and an antidepressant with norepinephrine and dopamine reuptake inhibition.

12. (Currently Amended): The method of Claims 1[,] or 2, or 3, wherein said antidepressant is selected from the group consisting of 5-HT-I alpha antagonist, 5-HT-I beta antagonist, 5-HTIA receptor agonists, 5-HTIA receptor agonists and antagonists, 5-HT2 receptor antagonists, viloxazine hydrochloride, dehydroepiandrosterone, NMDA receptor antagonists, AMPA receptor potentiators, substance P antagonists/neurokinin-1 receptor antagonists, nonpeptide Substance P antagonist, neurokinin 2 antagonists, neurokinin 3 antagonists, corticotropin-releasing factor receptor antagonists, antiglucocorticoid medications, glucocorticoid receptor antagonists, cortisol blocking agents, nitric oxide synthesize inhibitors, inhibitors of phosphodiesterase, enkephalinase inhibitors, GABA-A receptor agonists, free radical trapping agents,

Art Unit: 1623

atypical MAOI's, selective MAOI inhibitors, hormones, folic acid, leucovorin, tramadol, and tryptophan.

13. (Currently Amended):The method of Claims 1[,] or 2,-or 3, wherein said antidepressant is a selective serotonin reuptake inhibitor.

28. (Currently Amended): The method of Claim\_10, wherein said antidepressant is fluvoxamine and said antipsychotic is risperidone.

37. (Currently Amended): The method of Claims 1[,] or 2,-or 3, wherein an effective amount of said antidepressant is its recommended therapeutic dose, or its effective starting dose.

38. (Currently Amended): The method of Claims 1[,] or 2,-or 3, wherein the administration is oral.

Claim 43 is cancelled.

Claim 49 is cancelled.

Claim 50 is cancelled.

Claim 54 is cancelled.

Claim 61 is cancelled.

Claim 62 is cancelled.

63. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antipsychotic drug is an atypical antipsychotic.

64. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said atypical antipsychotic drug is selected from the group consisting of quetiapine, risperidone, ziprasidone, and pharmaceutically acceptable salts thereof.

66. (Currently Amended): The method of Claims 55[,] or 57~~-~~or 61, wherein said atypical antipsychotic drug is selected from the group consisting of olanzapine, iloperidone, melperone, amperozide, and pharmaceutically acceptable salts thereof.

67. (Currently Amended): The method of Claims 55[,] or 57~~-~~or 61, wherein said antipsychotic drug is a dopamine system stabilizer.

68. (Currently Amended): The method of 55[,] or 57~~-~~or 61, wherein said dopamine system stabilizer is aripiprazole, or pharmaceutically acceptable salts thereof.

70. (Currently Amended): The method of Claims 55[,] or 57-~~or~~-61, wherein said antidepressant is selected from the group consisting of serotonin reuptake inhibitors, a selective norepinephrine reuptake inhibitors, combined action SSRI/SNRI, serotonin-2 antagonist/reuptake inhibitors, an antidepressant with alpha-2 antagonism plus serotonin-2 and serotonin-3 antagonism, an antidepressant with serotonin/norepinephrine/dopamine reuptake inhibition and an antidepressant with norepinephrine and dopamine reuptake inhibition.

71. (Currently Amended): The method of Claims 55[,] or 57-~~or~~-61, wherein said antidepressant is selected from the group consisting of 5-HT-lalpha antagonist, 5-HT-beta antagonist, 5-HT1A receptor agonists, 5-HT1A receptor agonists and antagonists, 5-HT2 receptor antagonists, dehydroepiandrosterone, NMDA receptor antagonists, AMPA receptor potentiators, substance P antagonists/neurokinin-1 receptor antagonists, nonpeptide Substance P antagonist, neurokinin 2 antagonists, neurokinin 3 antagonists, corticotropin-releasing factor receptor antagonists, antiglucocorticoid medications, glucocorticoid receptor antagonists, cortisol blocking agents, nitric oxide synthesize inhibitors, inhibitors of phosphodiesterase, enkephalinase inhibitors, GABA-A receptor agonists, atypical MAOI's, selective MAOI inhibitors, hormones, folic acid, leucovorin, tramadol, and tryptophan.

72. (Currently Amended): The method of Claims 55[,] or 57-~~or~~-61, wherein said antidepressant is a selective serotonin reuptake inhibitor.

73. (Currently Amended): The method of 55[,] or 57-~~or~~-61, wherein said antidepressant is selected from the group consisting of fluoxetine, norfluoxetine, paroxetine, sertraline, fluvoxamine, citalopram, escitalopram, bupropion, nefazodone, mirtazapine, venlafaxine, duloxetine, milnacipran, reboxetine, zimelidine, indalpine, gepirone, femoxetine, alaproctate and pharmaceutically acceptable salts thereof.

74. (Currently Amended): The method of 55[,] or 57-~~or~~-61, wherein said antidepressant is clomipramine.

75. (Currently Amended): The method of Claims 55[,] or 57-~~or~~-61, wherein said antidepressant is fluoxetine and said antipsychotic is risperidone.

76. (Currently Amended): The method of Claims 55[,] or 57-~~or~~-61, wherein said antidepressant is fluoxetine and said antipsychotic is quetiapine.

77. (Currently Amended): The method of Claims 55[,] or 57-~~or~~-61, wherein said antidepressant is fluoxetine and said antipsychotic is olanzapine.

78. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is fluoxetine and said antipsychotic is aripiprazole.

79. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is paroxetine and said antipsychotic is risperidone.

80. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, whereto said antidepressant is paroxetine and said antipsychotic is quetiapine.

81. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is paroxetine and said antipsychotic is olanzapine.

82. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is paroxetine and said antipsychotic is aripiprazole.

83. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is sertraline and said antipsychotic is risperidone.

84. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is sertraline and said antipsychotic is quetiapine.

85. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is sertraline and said antipsychotic is olanzapine.

86. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, Wherein said antidepressant is sertraline and said antipsychotic is aripiprazole.

87. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is fluvoxamine and said antipsychotic is risperidone.

88. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is fluvoxamine and said antipsychotic is quetiapine.

89. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is fluvoxamine and said antipsychotic is olanzapine.

90. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is fluvoxamine and said antipsychotic is aripiprazole.

91. (Currently Amended): The method of Claims 55[,] or 57 ~~or~~ 61, wherein said antidepressant is fluoxetine and said antipsychotic is ziprasidone.

92. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said antidepressant is paroxetine and said antipsychotic is ziprasidone.

93. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said antidepressant is sertraline and said antipsychotic is ziprasidone.

94. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said antidepressant is fluvoxamine and said antipsychotic is ziprasidone.

95. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said antipsychotic is selected from the group consisting of risperidone, quetiapene, olanzapine, ziprasidone and aripiprazole, and the effective amount per day is from 0.5mg to 4mg for risperidone, from 25 mg to 400 mg for quetiapine, from 2.5 mg to 10 mg for olanzapine, from 10 mg to 40 mg for ziprasidone, and 2.5 mg to 15 mg for aripiprazole.

96. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein an effective amount of said antidepressant is its recommended therapeutic dose, or its effective starting dose.

97. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein the administration is oral.

98. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said treatment is effected for at least one of the group consisting of delaying relapse; resisting relapse; and resisting the recurrence of said depression.

99. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said treatment is effected for at least one of the group consisting of protecting against the development of tolerance toward the antidepressant; and remedying the development of tolerance toward said antidepressant.

100. (Currently Amended): The method of Claims 55[,] or 57[.] wherein said treatment is effected for at least one of the group consisting of avoiding a paradoxical effect of said antidepressant sensitizing said patients to said depression; treating a paradoxical effect of said antidepressant sensitizing said patients to said depression; for avoiding worsening of said depression from said antidepressant; and treating worsening of said depression from said antidepressant.

101. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said treatment is effected for at least one of the group consisting of avoiding a paradoxical

Art Unit: 1623

effect of said antidepressant sensitizing said patients to said depression and causing suicide; avoiding a paradoxical effect of said antidepressant sensitizing said patients to said depression and causing suicidal ideation; treating a paradoxical effect of said antidepressant sensitizing said patients to said depression and causing suicide; treating a paradoxical effect of said antidepressant sensitizing said patients to said depression and causing suicidal ideation; avoiding worsening of said depression from said antidepressant and causing suicide; avoiding worsening of said depression from said antidepressant and causing suicidal ideation; treating worsening of said depression from said antidepressant and causing suicide; and treating worsening of said depression from said antidepressant and causing suicidal ideation.

102. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said treatment is given for providing a neuroprotective effect.

103. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said treatment is given for treating residual symptoms of said depression.

104. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said antidepressant is selected from the group consisting of fluoxetine, norfluoxetine, paroxetine, sertraline, fluvoxamine, citalopram, escitalopram, bupropion, nefazodone, mirtazapine, venlafaxine, duloxetine, milnacipran, reboxetine, zimelidine, indalpine, gepirone, femoxetine, alaproctate and pharmaceutically acceptable salts thereof.

105. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said antidepressant is clomipramine.

106. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said antidepressant is ketamine.

107. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said antidepressant is ketamine, and wherein said antipsychotic are selected from the group consisting of perphenazine, trifluoperazine, zotepine, flupenthixol, amisulpride, and sulpiride.

108. (Currently Amended): The method of Claims 55[,] or 57 or 61, wherein said antidepressant is ketamine, and wherein said antipsychotic are selected from the group consisting of risperidone, quetiapine, olanzapine, ziprazidone, and aripiprazole, and the effective amount per day is from 0.5 mg to 4 mg for risperidone, from 25 mg to 400 mg for quetiapine, from 2.5 mg to 10 mg for olanzapine, from 10-40 mg for ziprazidone, and 2.5 mg to 15 mg for aripiprazole.

Claim 125 is cancelled.

130. (Currently Amended): The method of Claims 126, 127, or 128, ~~or~~ 130, wherein said atypical antipsychotic or said dopamine system stabilizer is selected from the group consisting of risperidone, quetiapene, olanzapine, ziprasidone and aripiprazole, and the effective amount per day is from 0.5 mg to 4 mg for risperidone, from 25 mg to 400 mg for quetiapine, from 2.5 mg to 10 mg for olanzapine, from 10 mg to 40 mg for ziprasidone, and 2.5 mg to 15 mg for aripiprazole.

Claim 133 is cancelled.

134. (Currently Amended): The method of Claims 131[,] or 132, ~~or~~ 133, wherein said atypical antipsychotic drug is selected from the group consisting of quetiapine, risperidone, ziprasidone, olanzapine, iloperidone, melperone, amperozide, and pharmaceutically acceptable salts thereof.

135. (Currently Amended): The method of Claims 131[,] or 132, ~~or~~ 133, wherein said dopamine system stabilizer is aripiprazole, or pharmaceutically acceptable salts thereof.

144. (Currently Amended): The method of Claims 140 or 143, wherein the said method is used for the purposes selected from the group consisting of (a) resisting nonadherence to the prescribed medication, (b) resisting said patients discontinuing[.] said prescribed medication.

146. (Currently Amended): The method of Claim[s] 145, wherein said antidepressant is selected from the group consisting of fluoxetine, norfluoxetine, paroxetine, sertraline, fluvoxamine, citalopram, escitalopram, bupropion, nefazodone, mirtazapine, venlafaxine, duloxetine, milnacipran, reboxetine, zimelidine, indalpine, gepirone, femoxetine, alaproctate and pharmaceutically acceptable salts thereof, wherein said antipsychotic drug is selected from the group consisting of an atypical antipsychotic and a dopamine system stabilizer, wherein said atypical antipsychotic drug is selected from the group consisting of risperidone, quetiapene, olanzapine, ziprasidone iloperidone, melperone, amperozide, and pharmaceutically acceptable salts thereof, and wherein said dopamine system stabilizer is aripiprazole.

**Detailed Action**

This office action is a supplemental notice of allowability in addition to the notice of allowability submitted February 23, 2011. This application claims benefit of provisional application 60/319436, filed July 30, 2002.

Claims 1, 2, 4-8, 10-38, 41, 42, 48, 51-53, 55-60, 63, 64, 66-68, and 70-124, 126-132, and 135-151 are pending in this application.

Claims 1, 2, 4-8, 10-38, 41, 42, 48, 51-53, 55-60, 63, 64, 66-68, and 70-124, 126-132, and 135-151 as amended are examined on the merits herein.

**Reasons for Allowance**

Applicant's amendment, submitted December 8, 2010, with respect to the rejection of instant claim 69 under 35 USC 112, second paragraph, for lacking antecedent basis in the base claims 1 and 2, has been fully considered and found to be persuasive to remove the rejection as claim 69 has been cancelled. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 140, 141, 143, and 144 under 35 USC 112, first paragraph, for lacking written description for the methods of communicating with a patent described therein, have been fully considered and found to be persuasive to remove the rejection as the provisional application clearly describes these method steps. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 1-6, 11, 13, 37, 38, 41-43, 48, 49, 53, 54, 56, 58, 59, 119-121, 123, 126-129, 142, 145, and 146 under 35 USC 103(a) for being obvious over Howard et al., have been fully considered and found to be persuasive to remove the rejection as Applicant has demonstrated that one of ordinary skill in the art would not have made the requisite modification to the prior art. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 1-4, 6, 10-15, 18, 22, 26, 30, 36-38, 41-43, 48, 49, 51-63, 66, 70-74, 77, 81, 85, 89, 91-105, 109-122, 124, 126-130, and 142 under 35 USC 103(a) for being obvious over Chappell et al., have been fully considered and found to be persuasive to remove the rejection as Applicant has demonstrated that one of ordinary skill in the art would not have made the requisite modification to the prior art. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 106-108, 131-134, and 136-139 under 35 USC 103(a) for being obvious over Chappell et al. in view of Berman, have been fully considered and found to be persuasive to remove the rejection as Applicant has demonstrated that one of ordinary skill in the art would not have made the requisite modification to the prior art. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 5, 16, 17, 20, 21, 24, 25, 28, 29, 32-35, 64, 75, 76, 79, 80, 83, 84, 87, 88, 91-94, 123, and 125 under 35 USC 103(a) for being obvious over Chappell et al. in view of Schmidt et al., have been fully considered and found to be persuasive to remove the rejection as Applicant has demonstrated that one of ordinary skill in the art would not have made the requisite modification to the prior art. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 5, 16, 20, 24, 28, 64, 75, 83, 87, and 125 under 35 USC 103(a) for being obvious over Chappell et al. in view of Roth et al., have been fully considered and found to be persuasive to remove the rejection as Applicant has demonstrated that one of ordinary skill in the art would not have made the requisite modification to the prior art. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 1, 2, 4, 5, 6, 10-14, 16-18, 20-22, 24-26, 28-30, 32-38, 41-43, 48, 49, 51-64, 66, 70-77, 79-81, 83-85, 87-89, 91-105, 109-122, 124-129, and 145-147 under 35 USC 103(a) for being obvious over Pivac et al. in view of Merck, have been fully considered and found to be persuasive to remove the rejection as Applicant has

Art Unit: 1623

demonstrated that one of ordinary skill in the art would not have made the requisite modification to the prior art. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 1-4, 7, 8, 10-15, 19, 23, 27, 31, 36-38, 41-43, 48, 49, 51-63, 67, 68, 70-74, 78, 82, 86, 90, 95-105, 109-122, 124-130, and 145-147 under 35 USC 103(a) for being obvious over Jordan et al. in view of Merck, have been fully considered and found to be persuasive to remove the rejection as Applicant has demonstrated that one of ordinary skill in the art would not have made the requisite modification to the prior art. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 106-108, 131-133, and 135-139 under 35 USC 103(a) for being obvious over Jordan et al. in view of Berman et al., have been fully considered and found to be persuasive to remove the rejection as Applicant has demonstrated that one of ordinary skill in the art would not have made the requisite modification to the prior art. Therefore the rejection is withdrawn.

Applicant's arguments, submitted December 8, 2010, with respect to the rejection of instant claims 3-5, 10-15, 20, 28, 37, and 50-52 under 35 USC 103(a) for being obvious over Theobald et al., and the enclosed examiner's amendment, have been fully considered and found to be persuasive to remove the rejection as Applicant has

demonstrated that one of ordinary skill in the art would not have made the requisite modification to the prior art. Therefore the rejection is withdrawn.

Currently claims 1, 2, 4-8, 10-38, 41, 42, 48, 51-53, 55-60, 63, 64, 66-68, and 70-124, 126-132, and 135-151 are pending in this application and have been examined on the merits herein. Applicant's amendment and evidence submitted December 8, 2010, and the enclosed examiner's amendment, are seen to be persuasive to remove all rejections of record in the previous office action and place the application in condition for allowance. Reasons for allowance are the same as those given in the notice of allowance submitted February 23, 2011 and are as follows:

The claimed invention is seen to be adequately described and enabled by the specification as originally filed. Regarding various steps of communicating with a patient as described in instant claims 140, 141, 143, and 144, these elements are considered to flow logically from the process of treating a patient and the treatment rationales described in the provisional application 60/319436. Therefore one skilled in the art would have envisioned consulting with the patient to be clearly a part of the process described in the application. Thus the claims meet the requirements of 35 USC 112.

Furthermore the claims are seen to be novel and non-obvious over the prior art. The currently claimed invention is a method of treating non-treatment-resistant, non-psychotic depression by co-administering an antidepressant and an atypical antipsychotic or dopamine system stabilizer. While certain prior art references do teach

or suggest that such a combination could be useful for treating depression, and that addition of an antipsychotic to an antidepressant may augment the effect of the antidepressant, for example Howard et al., Pivac et al., Jordan et al., or Chappell et al., (References of record in previous action) these references either suggest the combination as a treatment for resistant or refractory depression, or are silent as to whether it is advisable to administer the combination as initial therapy.

As illustrated by the Texas and Berlin algorithms cited by Applicant (References included with PTO-1449 submitted 12/8/2010) there is a strong presumption in the prior art against using antipsychotics in an initial therapeutic regimen for non-psychotic unipolar depression. In both of these algorithms, antipsychotics are only used as a last resort after the failure of multiple other therapeutic strategies including multiple different antidepressant monotherapies, antidepressant combination therapy, lithium augmentation, and electroconvulsive therapy. In both algorithms, monotherapy with an antidepressant is used as the initial therapy. As these algorithms represent the most widely used standard of care, they carry a strong presumption against using antipsychotics before multiple failures of various monotherapies and cotherapies of other agents, at which point the patient would be classified as treatment-resistant. Thus even though one of ordinary skill in the art would have been award of references teaching the combination of antipsychotics and antidepressants, these teachings would not be interpreted as suggesting using these combinations as initial therapy, and would instead have been saved as a last resort in patients whose condition had been classified as treatment-resistant.

For these reasons the claims are seen to meet the requirements of 35 USC 102 and 103.

Accordingly, Applicant's arguments and evidence submitted December 8, 2010, and the enclosed examiner's amendment, are sufficient to remove all rejections made in the prior office action as discussed above and to place the application in condition for allowance.

Any comments considered necessary by Applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled, "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric S. Olson whose telephone number is 571-272-9051. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on (571)272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric S Olson/  
Primary Examiner, Art Unit 1623  
4/5/2011